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**Chairwoman**



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Centers for Disease Control and Prevention  
Division of Global Migration and Quarantine  
ATTN: Q Rule Comments  
1600 Clifton Road, NE, (E03)  
Atlanta, GA 30333

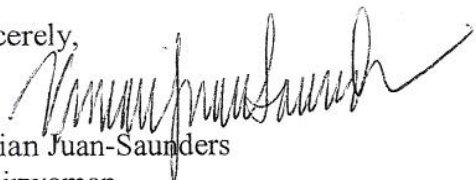
Dear Sirs,

Please find attached our comments and recommendations on the Notice of Proposed Rulemaking (NPRM) on Control of Communicable Diseases as proposed by the Centers for Disease Control and Prevention (CDC) at 42 CFR Part 70 and 71. Our comments relate only to Section 70.27, entitled "Indian country."

Generally, the Tohono O'odham Nation suggests that the federal agencies seek to assist the Tribe in implementing tribal law, if tribal law exists, before they initiate federal quarantine orders. We also question whether the Centers for Disease Control and Prevention (CDC) should be the primary agency exercising federal authority in Indian country. Should it not be the Indian Health Service instead?

Thank you for the opportunity to comment.

Sincerely,

  
Vivian Juan-Saunders  
Chairwoman

COMMENTS  
OF THE TOHONO O'ODHAM NATION  
ON PROPOSED 42 CFR PART 70 AND 71  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)  
ON  
CONTROL OF COMMUNICABLE DISEASES  
PUBLISHED IN THE FEDERAL REGISTER NOVEMBER 30, 2005

Comments on Section 70.27 entitled Indian country

Comment 1. The draft of Section 70.27 states that the Director of the CDC may impose specified public health measures with the concurrence of the Director of the Indian Health Service and after consulting with the affected Tribe or Tribes. This means that the Director of the CDC is implementing federal law within Indian country. There is no reference to tribal law.

We suggest that Section 70.27 begin with a statement that the Director will first seek to assist the Tribe or Tribes in implementing tribal law, if there is tribal law to apply. In the event there is no tribal law to apply, the Director will proceed as described, to implement federal law with the concurrence of the Director of the Indian Health Service and after consulting with the affected Tribe or Tribes.

The authority for this suggestion originates in 42 U.S.C. § 243 (Section 311 of the Public Health Service Act), which states: "The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, **shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations**, and shall advise the several States on matters relating to the preservation and improvement of

the public health,” (emphasis added). While the Director of the CDC may have the authority from 25 U.S.C. § 198 to implement federal law immediately, it is more in harmony with the federal policy of tribal self-determination for the Director to seek to assist the Tribe or Tribes in implementing tribal law first, and then move to implementing federal law.

Comment 2. Draft Section 70.27 provides for the Director of the CDC to take actions within Indian country with the concurrence of the Director of the Indian Health Service and after consultation with the affected Tribe or Tribes. We question whether the positions of the two federal agencies should be reversed. Should not the Indian Health Service be taking actions within Indian country, with the advice and concurrence of the CDC?

Federal statutes currently provide the authority to the Indian Health Service. 25 U.S.C. § 198 and 25 U.S.C. § 231 provided certain authorities regarding quarantine and isolation to the Secretary of the Interior. These authorities were transferred to the Surgeon General of the United States Public Health Service by 42 U.S.C. § 2001 in 1954, and to the Indian Health Service by 25 U.S.C. § 1661 in 1988. We fail to see where any authority in Indian country has been transferred to the CDC.

We suggest that quarantine authority in Indian country should be exercised by the Indian Health Service with the advice and concurrence of the CDC, rather than primarily by the CDC.